

Jun 12, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARGO L.,¹

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:18-cv-05126-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 19, 20

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 19, 20. The parties consented to proceed before a magistrate judge. ECF No. 4. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court grants Plaintiff's motion, ECF No. 19, and denies Defendant's motion, ECF No. 20.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them only by their first names and the initial of their last names.

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that he is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b), 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [her] physical or mental ability to do basic work activities," the
10 analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the
11 claimant's impairment does not satisfy this severity threshold, however, the
12 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
13 404.1520(c), 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite her limitations, 20 C.F.R. §§ 404.1545(a)(1),
6 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing work that she has performed in the past
9 (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the
10 claimant is capable of performing past relevant work, the Commissioner must find
11 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the
12 claimant is incapable of performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant's
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
16 the Commissioner must also consider vocational factors such as the claimant's age,
17 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
18 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other

1 work, analysis concludes with a finding that the claimant is disabled and is
2 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
6 capable of performing other work; and 2) such work “exists in significant numbers
7 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
8 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 On March 5, 2014, Plaintiff applied both for Title II disability insurance
11 benefits and Title XVI supplemental security income benefits alleging a disability
12 onset date of March 25, 2013. Tr. 198-206. The applications were denied. Tr.
13 119-26. Plaintiff appeared before an administrative law judge (ALJ) on September
14 15, 2016, and January 5, 2017. Tr. 34-96. On June 8, 2017, the ALJ denied
15 Plaintiff’s claim. Tr. 12-30.

16 At step one of the sequential evaluation process, the ALJ found Plaintiff has
17 not engaged in substantial gainful activity since March 25, 2013. Tr. 17. At step
18 two, the ALJ found that Plaintiff has the following severe impairments: coronary
19 artery disease/Ischemic heart disease, status-post angioplasty/stent; obesity;
20 osteoarthritis; degenerative disc disease; and carpal tunnel syndrome. Tr. 18.

1 At step three, the ALJ found Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of a listed
3 impairment. Tr. 19. The ALJ then concluded that Plaintiff has the RFC to perform
4 sedentary work with the following limitations:

5 [Plaintiff] can occasionally climb ramps and stairs. She can do no
6 climbing of ladders, scaffolds, and ropes. She can frequently
7 balance and occasionally stoop and crouch. She can do no
8 crawling. She can frequently handle and finger with the bilateral
9 upper extremities. She can have no concentrated exposure to
10 extremes of cold, humidity, and wetness. No concentrated
11 exposure to pulmonary irritants, and hazards due to hand problems.
12 She can have no bright lighting in the work environment (but can
13 work in moderate office lighting). She needs a stable work
14 environment with no more than occasional work place changes. She
15 can have interact [sic] with the public but not as a part of job tasks.
16 She can do no work in production-rate pace.

17 Tr. 20.

18 At step four, the ALJ found Plaintiff is unable to perform any past relevant
19 work. Tr. 24. At step five, the ALJ found that, considering Plaintiff's age,
20 education, work experience, RFC, and testimony from the vocational expert, there
were jobs that existed in significant numbers in the national economy that Plaintiff
could perform, such as, document preparer. Tr. 24-25. Therefore, the ALJ
concluded Plaintiff was not under a disability, as defined in the Social Security
Act, from the alleged onset date of March 25, 2013, though the date of the
decision. Tr. 25.

1 On May 21, 2018, the Appeals Council denied review of the ALJ's decision,
2 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes
3 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying
6 her disability insurance benefits under Title II and supplemental security income
7 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
8 issues for review:

- 9 1. Whether the ALJ properly evaluated Plaintiff's symptom claims;
- 10 2. Whether the ALJ properly evaluated the medical opinion evidence; and
- 11 3. Whether the ALJ conducted a proper step-five analysis.

12 ECF No. 19 at 8.

13 DISCUSSION

14 A. Plaintiff's Symptom Claims

15 Plaintiff contends the ALJ failed to rely on clear and convincing reasons in
16 discrediting her statements about the intensity, persistence, and other limiting
17 effects of her symptoms. ECF No. 19 at 12-14.

18 An ALJ engages in a two-step analysis to determine whether to discount a
19 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
20 1119029, at *2. "First, the ALJ must determine whether there is objective medical

1 evidence of an underlying impairment which could reasonably be expected to
2 produce the pain or other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation
3 marks omitted). “The claimant is not required to show that her impairment could
4 reasonably be expected to cause the severity of the symptom she has alleged; she
5 need only show that it could reasonably have caused some degree of the
6 symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). Second, “[i]f
7 the claimant meets the first test and there is no evidence of malingering, the ALJ
8 can only reject the claimant’s testimony about the severity of the symptoms if [the
9 ALJ] gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v.*
10 *Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings
11 are insufficient. The ALJ must identify what symptom claims are being discounted
12 and what evidence undermines these claims. *Id.* “The clear and convincing
13 [evidence] standard is the most demanding required in Social Security cases.”
14 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
15 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

16 Factors to be considered in evaluating the intensity, persistence, and limiting
17 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
18 duration, frequency, and intensity of pain or other symptoms; 3) factors that
19 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
20 side effects of any medication the claimant took to alleviate pain or other

1 symptoms; 5) treatment, other than medication, the claimant received for relief of
2 pain or other symptoms; 6) any measures other than treatment the claimant used to
3 relieve pain or other symptoms; and 7) any other factors concerning the claimant's
4 functional limitations and restrictions due to pain or other symptoms. SSR 16-3p;
5 20 C.F.R. § 404.1529, 416.929(c)(1)-(3). The ALJ is instructed to "consider all of
6 the evidence in an individual's record" "to determine how symptoms limit ability
7 to perform work-related activities." SSR 16-3p.

8 While the ALJ determined that Plaintiff's medically determinable
9 impairments could reasonably be expected to cause some of the alleged symptoms,
10 the ALJ discounted Plaintiff's claims concerning the intensity, persistence, and
11 limiting effects of the symptoms during the adjudicated period. Tr. 21.

12 *1. Inconsistent with the Objective Medical Evidence*

13 The ALJ found Plaintiff's reported symptoms inconsistent with the objective
14 medical evidence. Tr. 21-22. An ALJ may not discredit a claimant's symptom
15 testimony and deny benefits solely because the degree of the symptoms alleged is
16 not supported by the objective medical evidence. *Rollins v. Massanari*, 261 F.3d
17 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
18 1991). However, the objective medical evidence is a relevant factor, along with
19 the medical source's information about the claimant's pain or other symptoms, in
20

1 determining the severity of a claimant's symptoms and their disabling effects.

2 *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).

3 As to Plaintiff's reported symptoms about shortness of breath and daily chest
4 pain, the ALJ highlighted that catheterization of the heart in 2015 revealed mild to
5 moderate coronary artery disease but no high-grade coronary artery obstruction or
6 right coronary artery stent restenosis. Tr 645-46. In addition, the ALJ noted that
7 x-rays revealed no acute radiographic abnormality of the chest, Tr. 627; only mild
8 linear lung atelectasis, Tr. 647; minimal streaky atelectasis or scarring at the mid to
9 lower lung zone, Tr. 648; and no significant pulmonary abnormality, pleural
10 effusion, or pneumothorax, Tr. 649-50. Tr. 21. In addition to the imaging, the
11 ALJ considered the medical providers' observations and findings. Tr. 21. For
12 instance, the ALJ highlighted that Plaintiff's review-of-systems during her 2015
13 physical examination by Dr. Maxwell was normal and Plaintiff had good air
14 movement bilaterally, Tr. 553, and that in 2016 Dr. Woolever found Plaintiff's
15 coronary artery disease to be asymptomatic, Tr. 710-11. Tr. 21. Based on this
16 medical record, the ALJ rationally found Plaintiff's statements concerning the
17 intensity, persistence, and limiting effects of her shortness of breath and daily chest
18 pain as inconsistent with the objective medical evidence.

19 Regarding Plaintiff's neck and back pain and muscle spasms, the ALJ
20 highlighted 1) Dr. Maxwell's findings that Plaintiff had full range of motion with

1 no CVA, midline thoracic, or lumbar spinal tenderness, Tr. 553; 2) Dr. Moullet's
2 findings of normal strength and range of motion with no tenderness, swelling, or
3 deformity, Tr. 696; 3) Dr. Woolever's benign results, other than tenderness with
4 percussion of the right CVA, Tr. 752; and 4) Dr. Mc Murtry's noted normal range
5 of motion and strength, Tr. 658. Tr. 21; *see also* Tr. 737, 746, 749, 752, 803
6 (revealing normal range of motion and strength); Tr. 527 (Dr. Khaleel: finding that
7 Plaintiff had a normal gait and station and was able to ambulate without the use of
8 any assistive device). Based on this medical record, the ALJ rationally found
9 Plaintiff's statements concerning the intensity, persistence, and limiting effects of
10 her neck and back pain and muscle spasms inconsistent with the objective medical
11 evidence.

12 Relating to Plaintiff's carpal tunnel syndrome, the ALJ found that Plaintiff's
13 reported disabling symptoms were not consistent with the objective medical
14 evidence reflecting that Plaintiff's left-hand symptoms were greatly alleviated by
15 the November 2016 carpal release surgery. Tr. 21-22, 609-10. The ALJ also
16 highlighted that prior to the carpal tunnel release surgery Plaintiff was observed by
17 Dr. Moullet as having no grasping or handling difficulties putting on her socks and
18 shoes, Tr. 673, and the medical findings of full range of movement of extremities
19 and normal strength by Dr. Maxwell, Dr. Woolever, Dr. Mc Murtry, and Dr.
20 Moullet, Tr. 553, 696, 658, 737, 740, 743, 746. Tr. 22. Moreover, the ALJ

1 highlighted that although Dr. Khaleel assessed that Plaintiff had a positive Tinel's
2 sign in her left hand, consistent with carpal tunnel syndrome, her range of motion
3 of her bilateral wrists, hands, and fingers were normal, and grip strength was full
4 on the right and moderate on the left. Tr. 527-29. On this record, the ALJ
5 reasonably found the medical evidence inconsistent with Plaintiff's statements
6 about the intensity, persistence, and limiting effects of the symptoms. This finding
7 is supported by substantial evidence.

8 *2. Inconsistent with Activities*

9 The ALJ found Plaintiff's statements about the intensity, persistence, and
10 limiting effects of her symptoms inconsistent with her activities. Tr. 21-22. The
11 ALJ may consider a claimant's activities that undermine reported symptoms.
12 *Rollins*, 261 F.3d at 857. In addition, if a claimant can spend a substantial part of
13 the day engaged in pursuits involving the performance of exertional or non-
14 exertional functions, the ALJ may find these activities inconsistent with the
15 reported inability to work. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989);
16 *Molina*, 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in
17 order to be eligible for benefits, the ALJ may discount a claimant's symptom
18 claims when the claimant reports participation in everyday activities indicating
19 capacities that are transferable to a work setting" or when activities "contradict
20 claims of a totally debilitating impairment." *Molina*, 674 F.3d at 1112-13. Here,

1 the ALJ found that Plaintiff's blanket-making, coloring, painting, television
2 watching, and vehicle-driving reflected that, despite some functional limitations,
3 Plaintiff retained a limited capacity for work. Tr. 22. As to Plaintiff's blanket-
4 making, the ALJ erroneously found that Plaintiff was still making blankets in
5 2017, rather than 2015. Tr. 21, 44. However, Plaintiff's alleged disability onset
6 date was March 2013 and therefore Plaintiff made blankets for two-to-three hours
7 a day for two years after the alleged disability onset date. Tr. 44-46. While the
8 record does not support a finding that Plaintiff's blanket-making was consistent
9 with work-level activity, *see Fair*, 885 F.2d at 603 (recognizing that a claimant's
10 ability to engage in activities, such as housework or exercise, that involve periodic
11 rest do not support a finding that she can engage in regular work activities), the
12 ALJ's finding that Plaintiff's blanket-making after the alleged disability onset date
13 was inconsistent with her reports about the extent of her carpal tunnel syndrome
14 and back and neck pain and how these conditions impacted her ability to
15 concentrate and sustain is supported by substantial evidence. However, the ALJ's
16 finding that Plaintiff's reported headaches were inconsistent with her television
17 watching, Tr. 22, is not a sufficient reason on this record to discount Plaintiff's
18 reported headaches and their impact. To the extent the ALJ relied on Plaintiff's
19 other activities to discount her reported activities, the record is insufficient as to
20 Plaintiff's painting or coloring—either singularly or cumulatively—to serve as a

1 basis to discount Plaintiff's statements about her symptoms. Tr. 87, 246. The
2 record is also insufficient to discount Plaintiff's reported symptoms due to her
3 driving. Driving a car does not detract from a claimant's reported symptoms if the
4 driving activities are not transferable to the work setting. *Vertigan v. Halter*, 260
5 F.3d 1044, 1050 (9th Cir. 2001) (emphasizing that the claimant's driving did "not
6 mean she could concentrate on work despite the pain or could engage in similar
7 activity for a longer period given the pain involved"). Here, there is insufficient
8 evidence that Plaintiff drove to an extent consistent with work-level activity or to
9 such extent that was inconsistent with her alleged severe back pain and neck pain.

10 Plaintiff's blanket making is not a sufficient reason to discount the entirety
11 of Plaintiff's symptom complaints. Based on this record, the ALJ did not offer
12 clear and convincing reasons supported by substantial evidence to discount
13 Plaintiff's reported symptoms based on her activities.

14 Thus, even though the ALJ's finding that Plaintiff's symptom testimony was
15 not consistent with the objective medical evidence is supported by substantial
16 evidence, the ALJ's overall decision to discount Plaintiff's symptom testimony
17 cannot be affirmed because the only other reason relied on by the ALJ to discount
18 Plaintiff's symptom testimony—inconsistency with her activities—was not a clear
19 and convincing reason supported by substantial evidence. The ALJ's rejection of
20 Plaintiff's symptom claims may not solely be based on the lack of supporting

1 objective medical evidence. *See Rollins*, 261 F.3d at 857; *Bunnell*, 947 F.2d at
2 346-47; *Fair*, 885 F.2d at 601.

3 Therefore, the ALJ is instructed to reevaluate Plaintiff's symptom testimony
4 on remand.

5 **B. Medical Opinion Evidence**

6 Plaintiff contends the ALJ improperly considered the opinions of David
7 Woolever, M.D. ECF No. 19 at 10-11.

8 There are three types of physicians: "(1) those who treat the claimant
9 (treating physicians); (2) those who examine but do not treat the claimant
10 (examining physicians); and (3) those who neither examine nor treat the claimant
11 [but who review the claimant's file] (nonexamining physicians)." *Holohan v.*
12 *Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted). Generally,
13 a treating physician's opinion carries more weight than an examining physician's
14 opinion, and an examining physician's opinion carries more weight than a
15 nonexamining physician's opinion. *Id.* at 1202. "In addition, the regulations give
16 more weight to opinions that are explained than to those that are not, and to the
17 opinions of specialists concerning matters relating to their specialty over that of
18 nonspecialists." *Id.* (citations omitted).

19 If a treating or examining physician's opinion is uncontradicted, the ALJ
20 may reject it only by offering "clear and convincing reasons that are supported by

substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at 1216. The opinion of a nonexamining physician may serve as substantial evidence if it is supported by other independent evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

Dr. Woolever treated Plaintiff and diagnosed Plaintiff with general anxiety disorder, low back pain, coronary artery disease, diabetes, migraines, obstructive sleep apnea, carpal tunnel syndrome, and depression. Tr. 544, 930. In September 2015,² Dr. Woolever opined that Plaintiff was severely limited (unable to meet the

² The ALJ identified that the DSHS Physical Evaluation was performed by Dr. Woolever on August 4, 2015. Tr. 23. However, that was the date Plaintiff signed the form. Tr. 543. Dr. Woolever examined Plaintiff on September 3, 2015. Tr. 545. The Court refers to this opinion as the September 2015 or the 2015 opinion.

1 demands of sedentary work) and was only able to walk fifty feet and sit for twenty
2 minutes or less. Tr. 544-45. In January 2017, Dr. Woolever opined that Plaintiff
3 could perform sedentary work, would miss four or more days of work per month,
4 would suffer migraines due to bright lights, and would experience anxiety if
5 talking on the phone. Tr. 933.

6 The ALJ assigned minimal weight to Dr. Woolever's 2017 opinion (other
7 than his opinion that Plaintiff was limited to sedentary work, which the ALJ
8 accepted) and assigned little to no weight to Dr. Woolever's 2015 opinion. Tr. 22-
9 23. Because Dr. Woolever's opinions were contradicted by the non-examining
10 opinion of Dr. Edward Brophy,³ Tr. 103-06, the ALJ was required to provide
11 specific and legitimate reasons to reject Dr. Woolever's opinions. *See Bayliss*, 427
12 F.3d at 1216.

13
14

15 ³ The ALJ found that Dr. Mohammed Khaleel did not offer any functional
16 limitations as part of his consultative examination. Tr. 23, 526-30. Because Dr.
17 Brophy's opinion is supported by other independent medical evidence, the Court
18 need not decide, for purposes of applying the legitimate-and-specific standard of
19 review, whether Dr. Khaleel's opinion that Plaintiff was "able to ambulate without
20 any difficulty" was a functional opinion. Tr. 529; *see Andrews*, 53 F.3d at 1041.

1 1. 2015 Opinion

2 The ALJ discounted Dr. Woolever's 2015 opinion because it was
3 unsupported by the medical evidence and findings. Tr. 23. Relevant factors to
4 evaluating any medical opinion include the amount of relevant evidence that
5 supports the opinion and the consistency of the medical opinion with the record as
6 a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v.*
7 *Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Therefore, a medical opinion may be
8 rejected by the ALJ if it inadequately supported by medical findings. *Bray*, 554
9 F.3d at 1228. Here, the ALJ noted that Dr. Woolever's September 2015 clinic note
10 stated that Plaintiff had decreased sensation in her feet and some lumbar
11 tenderness, findings that were disproportionate to Dr. Woolever's opinion that
12 Plaintiff was able to walk only fifty feet and was unable to sit for over twenty
13 minutes, and inconsistent with the benign findings of Dr. David Maxwell, Dr.
14 Elizabeth Mc Murtry, Dr. Daniel Moullet, and Dr. Khaleel. Tr. 23. On this record,
15 the ALJ's findings are rational and supported by substantial evidence. First, the
16 ALJ rationally found that Dr. Woolever's extreme September 2015 opinion was
17 inconsistent with Dr. Woolever's findings on that date—findings that were
18 consistent with his prior largely normal findings. Tr. 22-23 (citing Tr. 546). This
19 finding is supported by substantial evidence in the entire record, not simply the
20

1 evidence cited by the ALJ.⁴ *See, e.g.*, Tr. 749 (noting normal cardiac rate and
2 rhythm, clear breath sounds, and normal gait and full range of movement of all
3 joints, although tender to percussion of lumbar spine), Tr. 746 (same, except no
4 noted tenderness in lumbar spine), Tr. 752 (noting normal cardiac rate and rhythm,
5 decreased breath sounds but otherwise lungs clear, full range of movement of all
6 joints and normal gait, although tenderness with percussion of the right
7 costovertebral angle (CVA)).

8 Second, the ALJ also reasonably found the other four physicians' findings
9 inconsistent with Dr. Woolever's extreme opinion. Tr. 23; Tr. 553 (Dr. Maxwell:
10 during visit for sore throat and cough, finding good air movement bilaterally;
11 positive wheezes, no rales; normal S1, S2 cardiovascular; no CVA, midline
12 _____

13 ⁴ *See* 42 U.S.C. 405(g) (requiring the Commissioner to "file a certified copy of the
14 transcript of the record including the evidence upon which the findings and
15 decision complained of are based"); *Lingenfelter*, 504 F.3d at 1035; *Heston v.*
16 *Comm'r of Soc. Sec.*, 245 F.3d 528, 535 (6th Cir. 2001) ("[T]he district court may
17 look to any evidence in the record, regardless of whether it has been cited by the
18 Appeals Council."); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's
19 failure to cite specific evidence does not indicate that such evidence was not
20 considered[.]").

1 thoracic, or lumbar spinal tenderness); Tr. 694 (Dr. Moullet: noting regular cardiac
2 rate and rhythm; lungs clear to auscultation, respirations non-labored, equal breath
3 sounds; normal range of motion of back with tenderness left midback and flank;
4 and normal range of motion and strength with no tenderness of the
5 musculoskeletal); Tr. 658 (Dr. Mc Murtry: finding regular cardiovascular rate and
6 rhythm; lungs clear to auscultation, respirations non-labored, equal breath sounds;
7 normal range of motion of back; and normal musculoskeletal range of motion and
8 strength); Tr. 526-30 (Dr. Khaleel: normal gait and station, lungs clear to
9 auscultation bilaterally without any adventitious sounds; normal S1, S2 cardiac;
10 full range of motion of all joints). The ALJ's decision to discount Dr. Woolever's
11 2015 opinion because it was inconsistent with the objective medical evidence,
12 including Dr. Woolever's examination findings and observations, is supported by
13 substantial evidence.

14 2. 2017 Opinion

15 The ALJ discounted Dr. Woolever's 2017 opinion because it was
16 inconsistent with the objective medical findings. Tr. 22-23. A medical opinion
17 may be rejected by the ALJ if it inadequately supported by medical findings and
18 the record as a whole. *Bray*, 554 F.3d at 1228; *Tommasetti v. Astrue*, 533 F.3d
19 1035, 1041 (9th Cir. 2008). Here, the ALJ found that Dr. Woolever's opinions that
20 Plaintiff needed to lie down two-to-three times a day and would miss four or more

1 days of work per month were inconsistent with the benign physical exam results
2 obtained by the four treating physicians discussed *supra*, as well as Dr. Woolever's
3 findings. Tr. 23, 752, 930-33. Plaintiff faults the ALJ for referring to only a single
4 benign physical examination by Dr. Woolever to discount the opinion, submitting
5 that the ALJ failed to appreciate that Plaintiff's symptoms waxed and waned. ECF
6 No. 19 at 11. It is this Court's duty to review the ALJ's findings in light of the
7 entire record. *See Heston*, 245 F.3d at 535 ("[T]he district court may look to any
8 evidence in the record, regardless of whether it has been cited by the Appeals
9 Council."); *Black*, 143 F.3d at 386 ("An ALJ's failure to cite specific evidence does
10 not indicate that such evidence was not considered[.]"). The record reflects that
11 Plaintiff sought medical treatment for various reasons almost monthly (and often
12 more than once a month) from 2014 to 2017. This record reflects that Plaintiff's
13 lumbar pain, wrist pain, and other symptoms waxed and waned, but that even at
14 their peak, the ALJ rationally found that the symptoms were not as functionally
15 limiting as Dr. Woolever opined. As discussed *supra*, the ALJ found that the
16 record reflects that Plaintiff's cardiac rate and rhythm were normal, her breathing
17 was largely normal, and her lumbar pain did not impact her ability to perform

1 sedentary work, so long as limited to sedentary work with postural imitations.⁵
2 *See, e.g.*, Tr. 339, 409, 527, 534, 537, 541, 594, 716, 719, 725, 731, 734-35, 740,
3 749, 845. The ALJ's finding that Plaintiff's conditions were not as functionally
4 limiting as Dr. Woolever opined is rational and supported by substantial evidence
5 in the record. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

6 **C. Step Five**

7 Plaintiff faults the ALJ for relying on vocational-expert testimony that relied
8 on an incomplete hypothetical as it did not include all of Plaintiff's limitations and
9 thereby the ALJ did not incorporate all of Plaintiff's restrictions into the RFC.
10 ECF No. 19 at 15-16. For reasons discussed *supra*, the ALJ's consideration of
11 Plaintiff's symptom claims is legally insufficient. Therefore, the Court must
12 reconsider step five on remand.

13 **D. Remedy**

14 Plaintiff urges this Court to remand this case for an immediate award of
15 benefits. ECF No. 19 at 16. "The decision whether to remand a case for additional
16 evidence, or simply to award benefits is within the discretion of the court."
17 *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,

18
19 ⁵ Dr. Woolever opined that Plaintiff's carpal tunnel syndrome did not cause any
20 manipulative limitations for her upper extremities. Tr. 933.

761 F.2d 530 (9th Cir. 1985)). When the Court reverses an ALJ’s decision for error, the Court “ordinarily must remand to the agency for further proceedings.” *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“[T]he proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.”). However, in a number of Social Security cases, the Ninth Circuit has “stated or implied that it would be an abuse of discretion for a district court not to remand for an award of benefits” when three conditions are met. *Garrison*, 759 F.3d at 1020 (citations omitted). Under the credit-as-true rule, where 1) the record has been fully developed and further administrative proceedings would serve no useful purpose; 2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and 3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand, the court will remand for an award of benefits. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017). Even where the three prongs have been satisfied, the court will not remand for immediate payment of benefits if “the record as a whole creates serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021.

Here, it is not clear from the record that the ALJ would be required to find Plaintiff disabled if all the evidence were properly evaluated. Even if the ALJ

were to fully credit Plaintiff's symptom testimony, the evidence would still present outstanding conflicts for the ALJ to resolve. The ALJ's weighing of the medical evidence—without considering Plaintiff's symptom reports—is supported by substantial evidence. Moreover, Dr. Edward Brophy opined that Plaintiff was capable of performing light work, Tr. 113-14, and Dr. Woolever opined that Plaintiff had no manipulative limitations in the 2017 opinion, Tr. 933. Therefore, further proceedings are necessary for the ALJ to reconsider Plaintiff's symptom testimony and to weigh the conflicting evidence. On remand, the ALJ should reconsider Plaintiff's symptom complaints and ensure that the reasons cited to discount those complaints, if any, are legally sufficient.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is neither supported by substantial evidence nor free of harmful legal error. Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 19**, is **GRANTED**.
 2. Defendant's Motion for Summary Judgment, **ECF No. 20**, is **DENIED**.
 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff
- REVERSING and REMANDING the matter to the Commissioner of Social

1 Security for further proceedings consistent with this recommendation pursuant to
2 sentence four of 42 U.S.C. § 405(g).

3 The District Court Executive is directed to file this Order, provide copies to
4 counsel, and **CLOSE THE FILE.**

5 DATED June 12, 2019.

6 s/Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES MAGISTRATE JUDGE
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